92-1178

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

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KEVEN LEITH GAINES, Individually and as Natural Tutrix of the Minor Child, KIMBERLY MICHELLE GAINES,

PETITIONER.

versus

THE CITY OF BATON ROUGE, CITY OF BATON POLICE DEPARTMENT PAT SCREEN, WAYNE ROGILLIO, TONY VIDRINE, TERRY RAYMOND, JOHN D ATTUSO, JOHNNY WHEELER, JAMES MANN, JULES LOCKETT, KIRK SUMMERS, RICHARD COCKRELL, JR., AND PERCY ROME, JR., ALL IN THEIR OFFICIAL CAPACITIES, AND ALL INDIVIDUALLY

RESPONDENTS,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTION FOR REVIEW

The sole issue is did the plaintiff meet her burden in opposition to a motion for summary judgment, by proffering evidence that estbablishes proof on essential elements of her case, that presented genuine issues of material fact for trial. The district court ruled which ruling was affirmed by the Fifth Circuit Court of Appeal, that the defendants met their burden of showing the absence of a genuine issue of material fact and that they were entitled to judgment as a matter of law. Did the courts err?

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The constitutional and statutory provisions set forth above are quoted in more specifics and attached as Appendix E.

## OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Louisiana is attached as Appendix A. The opinion of the United States District Court for the Middle District Court of Louisiana on the Motion for Reconsiderations, is attached as Appendix B. The opinion of the Fifth Circuit Court of Appeal is attached as Appendix C. The denial of the petitioner for rehearing by the Fifth Circuit Court of Appeal is attached as Appendix D.

## CONCISE STATEMENT OF JURISDICTION

THIS HONORABLE COURT has jurisdiction herein pursuant to the provisions of 28 U.S.C. 1254.

The date of entry of the Fifth Circuit Court of Appeal denial of an application for a rehearing by petitioner was October 13, 1992.

Under Rule 13 of this Honorable Court's rules, this petition for certiorari is filed timely.

## STATEMENT OF THE CASE

This application for a Writ of Certiorari to issue to the Fifth Circuit Court of Appeal is filed by Mrs. Keven Leith Gaines, the widow of Alonzo Gaines, and as natural tutrix of the minor child Kimberly Michelle Gaines. Jurisdiction in this the Supreme Court of the United States is vested under 28 U.S.C. Sec. 1254. Jurisdiction in the District Court was vested pursuant to Title 28, Sections 1331 and 1343 of the United States Code and Title 42, Section 1983 of the United States Code.

The party before the court is the petitioner, Keven Leith Gaines, individually and as natural tutrix of the minor child Kimberly Michelle Gaines.

On June 30, 1987, Keven Leith Gaines, individually and as natural tutrix of her minor child, Kimberly M. Gaines, filed a complaint in the United

States' District Court for the Middle District of Louisiana for Civil Rights Violations for the wrongful death of her husband, Alonzo Gaines based upon 42 U.S. C Section 1983, deprivation of rights under the Constitution of the United States, including but not limited to his Fifth, Fourteenth and Eighth Amendment rights and pendent state law claims.

After institution of this action, Brenda Williams brought an action of intervention on behalf of her minor child, claiming her daughter was the natural child of the decedent. Keven Leith Gaines filed a motion in opposition. The District Court rendered an order denying Brenda Williams right to intervene.

On October 26, 1987, Brenda Williams applied to the District Court for

permission to appeal the order of the court in forma pauperis. The District Court denied the motion.

On November 13, 1987, Brenda Williams appealed to the United States Court of Appeal for the Fifth Circuit. The court on January 30, 1989, reversed and remanded the case back to the District Court. The District Court on Feburary 1, 1989 granted Brenda Williams motion to intervene and to proceed in forma pauperis.

On April 24, 1990, a settlement conference was held. The intervenor on October 1, 1990 filed a motion for summary judgment based on filiation. The Court scheduled a hearing on the motion for January 18, 1991. On October 11, 1990, plaintiff filed a motion to dismiss intervenor from the lawsuit presenting defenses of lack of procedural capacity

under Rule 17, the court set hearing for February 1, 1991. On October 17, 1990, the court rescheduled the hearing on plaintiffs motion to dismiss, presenting defenses of lack of procedural capacity under Rule 17 to January 18, 1991 to be heard along with the motion for summary judgment filed by intervenor.

On November 1, 1990, the defendants filed a motion for summary judgment against the plaintiff. The plaintiff filed an opposition to the motion for summary judgment. The court scheduled a hearing on its written docket on defendants motion for summary judgment to be heard on February 15, 1991. On January 17, 1991, the court denied plaintiff's motion to dismiss intervenor for lack of procedural capacity. The Court then raised the issue whether the

court had subject matter jurisdiction to determine filiation, in view of the well established marital family law federal exception. All parties were ordered to brief the issue within 10 days of the date of the order.

On February 13, 1991, plaintiff filed a motion for continuance of oral argument on intervenor's motion for summary judgment, and on February 14, 1991, filed a motion for extension to present oral argument on defendant's motion for summary judgment. The District Court denied both motions and ordered all parties to be in court on February 15, 1991. The court heard oral argument on intervenor's motion for summary judgment, and did not hear oral argument on defendant's motion for summary judgment. The court ruled it would not rule on any motions for summary

judgments filed by intervenor and defendants. The court ordered all parties to keep it informed of the filiation claim pending in state court. The court granted the defendants' motion to supplement their motion for summary judgment.

On February 25, 1991, the defendants supplemented their motion for summary judgment. The court granted the plaintiff's motion to file opposition to defendant's supplement.

The defendants motion for summary judgment was granted on April 26, 1991, dismissing this action and the intervenor's action. The court also dismissed the state law claims of plaintiff and intervenor without prejudice.

On May 1, 1991, Keven Leith Gaines filed her notice of appeal of the summary

judgment in favor of defendants.

The plaintiff filed a motion and order for reconsideration of summary judgment disposition. The court noticed the hearing for September 20, 1991. The court heard oral argument on plaintiff's motion for reconsideration and took the matter under advisement. The court denied plaintiff's motion for reconsideration on October 24, 1991.

Keven Leith Gaines then filed an appeal with the Fifth Circuit Court of Appeal. That court rendered its decision on September 14, 1992, affirming the lower court's decision. Petitioner made an application for rehearing to the Fifth Circuit Court of Appeal which application was denied by mandate of that court on October 13, 1992.

This application for a writ of certiorari seeks to demonstrate that the

decision of the Fifth Circuit Court of Appeal is clearly erroneous and is in conflict with not only the case law but is also subject to be interrepted as being a denial of constitutional safeguards. These reasons are compelling enough for this court to grant this application for a Writ of Certiorari.

Applying all of the above to the present factual case clearly shows both the Fifth Circuit Court of Appeal and the District Court were in error in concluding that the defendants' motion for summary judgment should be granted.

## ARGUMENT

In this case, it will clearly be shown that there are material facts that present a genuine issue for trial.

The standard of review for the issue presented in this writ is found in WASHINGTON v. ARMSTRONG WORLD INDUSTRIES, INC., 839 F.2d 1121 (5th Cir. 1988). In this case the court held that the standard for summary judgment, is a complete failure of proof on an essential element makes all other facts immaterial because there is no longer a genuine issue of material fact.

The district judge, in applying the standard for medical care for pretrial detainees, found that the plaintiffs had failed to present any evidence that the defendants acted with deliberate indifference to the medical needs of the accident.

The decedent at the time of his

death, was a pretrial detainee at a precinct station of the Baton Rouge City Police Department, and not a convicted prisoner who had already been adjudicated guilty. As a pretrial detainee, the appropriate standard of care is set forth in BELL v. WOLFISH, 441 U.S. 520, 99 S. Ct. 1861, 60 L.Ed. 2d 447 (1979), and was more recently reiterated by The Fifth Circuit Court of Appeal in CUPIT v. JONES, 836 F.2d 82 (5th Cir. 1987)

The standard established by the BELL v. WOLFISH and CUPIT v. JONES criterion has been applied to medical attention to pretrial detainees, which entitles them to reasonable medical care unless the failure to supply it is reasonably related to a legitimate governmental objective.

The evidence concerning the last few hours of the decedent's life comes from

the defendants. The plaintiffs submitted to the district court, depositions from various police officers as witnesses to events that occurred immediately prior to the death of Mr. Gaines.

In the district court's original ruling on the defendant's motion for summary judgment, it listed the facts of this case it believed to be undisputed. Appellants believe the court's determination of the disputed facts as undisputed facts was in error. The Fifth Circuit Court of Appeal perpetuated this error.

The district court adopted the undisputed facts as outlined by the defendants without considering the evidence presented by the plaintiffs. The Fifth Circuit Court of Appeal's opinion in affirming the decision of the lower court was as curious as the lower

case law. In considering a motion for summary judgment, the district court must draw inferences most favorable to the party opposing the motion and take care that no party will be improperly deprived of a trial of disputed factual issues. UNITED STATES STEEL CORP. v. DARBY, 516 F.2d 961 (1975), SANKOVICH v. LIFE INS. CO. OF NORTH AMERICA, 638 F.2d 136 (9th Cir. 1981).

The court stated as an undisputed fact that the two police officers, Terry Raymond and Tony Vidrine, noticed "erratic" driving. This conclusion is not support by the facts. Terry Raymond specifically states, that their attention was drawn to the vehicle because it has stopped near a stop sign, partially on the roadway and partially off. (see record, Internal Affairs Report, Officer

Raymond's testimony, Exhibit 15, page 49).

The court next states as an undisputed fact that there was an altercation between the officers and the decedent. This conclusion made by the court is not supported by the facts of this case. In its ruling on reconsideration, the court infers that the word "altercation", which the court used in its original ruling, (see record, page 844), may have been too strong and that perhaps the word "interaction" may be more appropriate. The reconsideration further states that this "interaction" was the justification for the charge of battery against the decedent. In his deposition, (see rec., Exhibit 12, page 22, lines 22-25) of the record, Officer Vidrine states that Mr. Gaines body struck his body as the decedent was

running towards him and this constituted battery against a police officer. Under Louisiana Revised Statute 14:34.2 "Battery of a police officer" is defined as a battery committed without the consent of the victim when the offender has reasonable grounds to believe the victim is a police officer acting in the performance of his duty. Under Louisiana law, the first criteria for battery is "intent". It is evident that there was no intent by Mr. Gaines to touch Officer Vidrine. It is clear that the criteria for the charge of battery of a police officer is not met. The very basis for detaining Mr. Gaines was not legal. The interaction at best involved a man randomly moving around because of pain and unintentionally touching someone in the process. In fact it was obvious at

this point that Mr. Gaines was in no way rational and needed medical attention.

In his deposition (see Exhibit 1), on page 12, line 9 et seq., arresting Officer Vidrine states that "... Mr. Gaines was like on the floor board almost on all fours, or he was on all fours, if I can remember. And he jumped upon the seat and started coming straight towards--Officer Raymond and had moved in towards the door at the time. He started coming straight towards her, so she closed the door, and he popped out of the sun roof, stuck his head out and his body and started climbing out of it. And he really looked weird, a wild eyed look to him." This is a more vivid description than the one presented by the defendants. It is clear from the on-site account by the arresting officer that Mr. Gaines was found on the floorboard of the vehicle in

indication that Mr. Gaines needed medical attention. The time was approximately 11:50 a.m. on July 4, 1986. Officer Vidrine reiterates on page 15, line 16, 17, of his deposition, Exhibit 1, that Gaines was acting very strangely and that he had a real wild eyed look about him.

In Officer Raymond's deposition, (See rec., Exhibit 11, page 14, line 1-2), she indicates that she wanted the decedent to get out of the car to "see what was wrong with him" because maybe she "could help him". This was prior to the alleged charge of battery of a police officer. This is an indication that a police officer realized at an early point that the decedent needed some type of assistance or help, other than being thrown in a jail cell.

On page 4 of his original ruling, district court Judge Parker states that Officer Mann thought that decedent was simply drunk at the time of arrest and therefore Vidrine, Raymond and Mann brought decedent to the Highland Station. The arresting officers, who were face to face with the decedent when he was originally cited, did not think that the decedent was drunk.

They would have issued him a citation for DWI if that had been the case. For the decedent to be acting in the manner he was acting because of intoxication by alcohol, he would have had to be, in the vernacular, "sloppy drunk". Anyone would have been able to immediately ascertain that he was drunk. The conclusion that the decedent was drunk has been accepted by the district court even after evidence has been presented that this was not true, (see rec. page 845).

The lab tests showed that the decedent had no alcohol present in his system (see record, Internal Affairs Report, Exhibit 15, page 76). As there was no reason for the police officers to think that the decedent was drunk, then they should have realized that the cause of his actions was something other than alcohol consumption. Because of this, the police were once again put on notice that the decedent needed assistance because something was wrong with him.

The court also lists as an undisputed fact that Mr. Gaines was placed in a cell at the precinct station and an officer came in to transport him to Parish Prison and noticed the decedent lying on the floor apparently unconscious and having difficulty breathing. However, the facts indicate that many police officers went by the cell of the

decedent and failed to provide any assistance to him (see record, deposition of Officer Summers, Exhibit 6 page 7, line 15-16, deposition of Officer Attuso, Exhibit 9, page 13, line 21-22, deposition of Officer Lockett, Exhibit 1, page 10, lines 19-22, page 11, lines 1-12, testimony of Officer Attuso, Internal Affairs Report, Exhibit 15, page 12). Testimony from many of the officers state that they were preparing to take the decedent for medical treatment (see record, Internal Affairs Report, Exhibit 15 page 18) and defendants memorandum states that they were preparing to take the decedent to parish prison (see rec., page 427) and yet others say they were preparing to take the decedent to central booking (see rec., deposition of Officer Lockett, Exhibit 1, page 9, line 1-4).

The court quotes Officer Marshall as saying that Gaines was in such bad shape that he was not aware where he was. On page 5 of the ruling on reconsideration, the court also accepts Officer Cockrell's opinion that what was happening at the precinct was "normal". The court ignores plaintiff's referral to Officer Rosalyn Marshall's deposition, (see rec., Exhibit 2, page 8, lines 4-25), wherein she states that Gaines behavior was so unusual that she went to her personal vehicle and retrieved a tape recorder, placed it in front of Gaines cell, and recorded the event for use at the police academy. Gaines behavior was anything but normal and should have put any reasonable man on notice that further assistance was needed. This is further proof that the material fact of whether the police should have been put on notice

is questionable and must be determined by a trial on the merits.

The aforementioned tape could clear up a number of questions concerning what happened at the precinct station. Plaintiff filed a motion for the defendants to produce the tape, but they complained that the tape could not be found. The district court ordered that they sign a certificate stating that they could not find the tape, (See rec., page 225). All of a sudden, several years after the incident, the defendants claim that the tape was found in the trunk of someone's vehicle. The tape presented to the court was inaudible and unintelligible. It is only at a trial of the merits that the truth of what happened at the precinct can be determined.

motion for summary judgment appears to be whether or not the requirement of "deliberate indifference to the medical needs of Mr. Gaines" by the police department or City of Baton Rcuge, is met by the plaintiffs in their claim that a violation of 42 U.S.C.A. Section 1983 has occurred. The defendants respectfully submit that the police officers acted in a reasonable manner, did not abuse Mr. Gaines, and were not indifferent to his medical needs. During the numerous depositions taken concerning this case, several officers were asked about the bruises that were discovered on the body of the decedent. Several officers acknowledged the presence of the bruises and contusions, see Exhibit 4, page 22, line 10-13, of Officer Cockrell's deposition, and Exhibit 5, page 17, line .

14-15, page 18, line 1-6, of Officers Wheeler's deposition, to name two. None of the officers were willing to state the circumstances under which Mr. Gaines received the bruises and contusions.

Plaintiff contends that Mr. Gaines was physically abused by the defendants. This is a definite issue of material fact that is in dispute.

Several officers testified that the decedent screamed that he was on drugs. The police should have at least assumed that the decedent might have needed to have been checked for the possibility of ingestion of an amount of drugs sufficient to be detrimental to the decedent's health, particularly in consideration his rantings. Many officers observed Mr. Gaines deranged behavior, but they all ignored his obvious need for medical attention. Even

after realizing that the decedent had stopped breathing, the defendant failed to even attempt first aid. They just allowed him to lie there and die.

The arresting officer, at the least, should have seen to the status of her arrestee. On page 10 of defendants original memorandum, it is stated that Officer Raymond, one of the arresting officers, assisted in putting the decedent in the holding cell, and then set about writing her reports and did not pay any further attention to Gaines. Officer Johnny Wheeler, in his deposition (see rec., Exhibit 5, page 22, line 23-25), states that it is the responsibility of the arresting officer to look after a detainee or arrestee. Officer Wheeler further states that he never observed either of the arresting officers monitoring the arrestee. This

the medical needs of Gaines on the part of the arresting/responsible officers.

It is clear from the facts of this case that named defendants were deliberately indifferent to the medical needs of Alonzo Gaines. In ESTELLE v. GAMBLE, 97 S. Ct. 285 (1976) the United States Supreme Court has stated that regardless of how evidenced deliberate indifference to prisoner's serious illness or injury states a cause of action under Civil Rights Statute. U.S.C.A.. Const. Amend. 8; 42 U.S.C.A. Section 1983. The defendants limit their discussion to physcial injuries, but the edict of the court is much broader in that it encompasses illnesses and injuries. In the same case, the Supreme Court held that "the inadequacy of police

training may serve as the basis for section 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. In MONELL v. NEW YORK DEPARTMENT OF SOCIAL SERVICES 436 U.S. 658 (1978) AND POLK COUNTY v. DODSON, 454 U.S. 312, 326 (1981), the United States Supreme Court held that where a municipality's failure to train its employees in a relevant respect evidence a "deliberate indifference" to the rights of it inhabitant, such a shortcoming can be properly thought of as a city "policy or custom" that is actionable under Section 1983. It is contended by the plaintiffs that the City of Baton Rouge and its police department, by not having in effect any policy concerning the proper handling of mentally ill, deranged, or

drug influenced individuals, it is very evident that there was a deliberate indifference to the medical needs of persons in their custody exhibiting this type of behavior. The defendants, on page 17 of their memorandum admit that the police officers had a responsibility to respond reasonably to the medical needs of Mr. Gaines. Plaintiff contends that not only did the police department shirk their duty to respond to the medical needs of Mr. Gaines, but that they were also carrying out the policies of the City of Baton Rouge.

An autopsy of the body of the decedent revealed that Mr. Gaines had died of asphyxiation caused by the aspiration of regurgitated stomach contents. A laboratory analysis further revealed that Mr. Gaines urine contained a quantity of phenclidine phosphate (PCP

or "angel dust"), with an underlining disease of Sickle Cell Anemia. The laboratory did not find any alcohol in the urine or blood of the decedent. The appellees do not dispute the findings of the autopsy report.

The autopsy report draws attention to yet another inference that the police should have been put on notice that the decedent needed medical attention. Mr. Gaines was in excruciating pain, particularly if he was going through a sickle cell crisis. The eminent Dr. Emil Laga, an expert, was asked the question whether or not a lay person would be able to recognize the symptoms of a sickle cell crisis. Dr. Laga, in his deposition, (see rec., page 767), clearly states that a layman should have detected a problem. Although one cannot expert police to diagnose a illness, the manifestations of a sickle cell crisis

are unquestionably demonstrable. The autopsy suggests that the decedent went through a sickle cell crisis. On page 770 of the record, Dr. Laga states that a person experiencing a sickle cell crisis would exhibit clear symptoms such as excruciating pain, a compromise of breathing, the possibility of the person fading in and out, bone pains and muscle pains. These symptoms were all clearly exhibited by the decedent. The constant screaming and hollering were because of the excruciating pain. The police have already attested to the fact that the decedent had trouble breathing. During the ride in the squad car, the police state that the decedent would have periods when he simply went limp (see record, page 756, also deposition of Officer Raymond, page 23, line 9-12). This was Mr. Gaines "fading in and out".

These were all very demonstrable symptoms that the decedent needed medical attention. The issue of what transpired can only be determined at a trial of this matter, and not within the confines of a motion for summary judgment.

This case is abundant with instances wherein the Fifth Circuit Court of Appeal could have and should found that defendants were deliberately indifferent to the needs of the decedent. There are sufficient inferences and evidence of deliberate indifference for it to be a genuine issue of material fact, and therefore not determinable in a summary judgment proceeding. As stated previously, all inferences should be decided in favor of the nonmovant. UNITED STATES STEEL CORP. v. DARBY, 516 F.2d 961 (1975), SANKOVICH v. LIFE INS. CO. OF NORTH AMERICA, 638 F.2d 136 (9th Cir. 1981).

In support of their motion for summary judgment, the defendants presented an affidavit (see rec., page 438) outlining the policy of the Baton Rouge City Police Department concerning medical treatment as:

> "Where an arrestee does not show signs of physical injury, injury, but is evidencing mental abnormalities, it is within the officers discretion whether to seek medical help or simply transport the individual to a holding cell."

However, the policy as stated in the appellees affidavit is in conflict with the testimony provided by the chief of police.

The chief stated in his deposition, (see rec., Exhibit 4, page 24), that the department's policy is:

> "If the person does not have a physical injury, but is acting

irrational and has a charge on him, the policeman is to first bring him to jail. If the person has no charge on him, but is acting irrational, the policeman has an option to take him to Greenwell Springs Hospital for the safety of themselves and others."

The police chief's affidavit and his testimony in his deposition are in conflict. In the affidavit, the police chief states that an arrestee (presumably a person with a charge) who doesn't show physical injury, but is evidencing mental abnormalities, then the officer has discretion as to whether to seek medical help or take the individual to the precinct.

In his deposition the police chief states that the policy when a person does

not have a physical injury, but is acting irrational and has a charge (presumably an arrestee), then the officer must first bring him to the precinct. If the person has no charge against him, under the above-related circumstances, then the officer has an option to take him to a mental hospital. This conflict is material to this case and subsequently must be examined under the scrutiny of a trier of fact, i.e. a jury, and not by summary judgment.

The police officers evidently followed the policy of taking an arrestee to the jail first, (see record, deposition of Chief Rogillio, Exhibit 4, page 24) and the time spent taking an ill arrestee to jail meant the difference between life and death for the decedent, especially considering the indifference shown towards him as he died in his cell.

(see record, deposition of EMS medic Steven Schumacher, Exhibit 7, page 40).

The admissions on file admitted to by the defendants state that the City of Baton Rouge does not have a policy concerning the handling of mentally, drug, or otherwise disturbed or deranged prisoners, (see rec. page 839).

In the district court's ruling on motion, it appears to have based its ruling in part upon the affidavits of the defendants concerning their policy, and appears to have relied upon their affidavits to negate the plaintiff's admissions on file and the deposition testimony of the chief of police and police officers concerning policy. When deposition testimony if offered in response to affidavits, it is impermissable for the court to weigh the credibility of the parties, see SUMMERLIN

v. EDGAR, 809 F.2d 1034 (4th Cir. 1987).

In the context of failure to provide medical care, the plaintiff must prove more than negligence. The evidence presented by plaintiff, clearly shows that the conduct of the defendants shocks the conscience of a modern day society.

Drug abuse is very prevalent in today's society and has been prevalent since the late 1960's. Defendant's lead one to believe that the possibility of the police department encountering someone who is "strung out" on drugs and thereby needing immediate medical attention was unforseeable on July 4, 1986. The newspapers and other communications media are full of incidents of drug abuse and misuse. The City of Baton Rouge has had a significant drug problem for over a decade. Police officers, because of authority they have,

and duty to protect the citizenry of the City of Baton Rouge they have, should have had training in how to properly deal with those individuals they encounter that have a serious drug problem. The police department should not only know how to handle a situation, but they should be trained to recognize a drug problem when they encounter one. Since the decedent informed them that he was on drugs, their responsibility is heightened. Although they did recognize that Mr. Gaines had a drug problem at the scene of the arrest, according to arresting Officer Tony Vidrine, they made no attempt to seek medical attention for Mr. Gaines during the 1 and 1/2 hours that they had him in custody. Their deliberate indifference to his medical needs cost him his life.

The policy of the Baton Rouge City Police Department is discriminatory as it relates to medical treatment for pretrial detainees manifesting drug or mental abnormalities. The policy punishes pretrial detainees who allegedly have committed an offense. Pretrial detainees such as Alonzo Gaines have protection against arbitrary and oppressive treatment while they are in government custody. Since Mr. Gaines had only been arrested and not convicted of a crime the city could not impose any restriction for the purpose of punishment, see BELL v. WOLFISH, supra.

Plaintiffs secured the opinion of an expert in the field of police procedures and professional standards. That expert is Mr. E. Wilson Purdy. His credentials are found at pages 832-836 of the record. The district court excluded the findings

of Mr. Purdy, but did not discredit his findings. Mr. Purdy was supplied with all the information available (this information is found at pages 829-830 of the record.

In pertinent part, Mr. Purdy stated that the "Police supervisory personnel at the arrest scene, and again at lockup, failed to properly evaluate subject's condition, and failed to initiate action for treatment in a timely manner. The Baton Rouge Police Department failed to develop and implement proper written policies an procedures for handling individuals who manifest unusual or extreme behavior, indicating influence of drugs or mental disorders". Although the police had a policy, it was discriminatory as to arrestees, and hence a unconstitutional policy. The

defendants have failed to state a legitimate governmental purpose for their policy. This resulted in the death of the decedent.

The policy of the Baton Rouge Police Department can be said to be the policy adopted by the City of Baton Rouge, in that the City of Baton Rouge has no policy (see admissions at record, page 839). The chief of police as the administrator of the Baton Rouge City Police Department, had the authority to make final policy.

The Court in PARTRIDGE v. TWO UNKNOWN POLICE OFFICERS OF HOUSTON, 791 F.2d 1182 (5th Cir. 1986) held that prison officials had a duty, at a minimum, not to be deliberately indifferent to the plaintiffs serious medical needs. Partridge recognized that in some limited situations, the failure

give rise to a section 1983 violation. The court stated: "A serious medical need may exist for psychological or psychiatric treatment, just as it may exist for physical ills. A psychological or psychiatric condition can be as serious as any physical pathology or injury, especially when it results in suicidal tendencies."

Although the facts in Partridge deal with facts not similar to the facts in this case, it does lend support and recognize that a pretrial detainee's psychological or psychiatric condition cannot be ignored when his condition is known and demonstrable.

This case is clearly not one to be decided by summary judgment as there are numerous genuine issues of material fact that are in dispute. This case has a

# APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

KEVEN L. GAINES, ET AL

CIVIL ACTION

VERSUS

NO. 87538-A

CITY OF BATON ROUGE, ET AL

RULING ON MOTIONS

This matter is before the court on a motion by defendant, the City of Baton Rouge, Pat Screen, Wayne Rogillio, Tony Vidrine, Terry Raymond, John D. Attuso, Johnny Wheeler, James Mann, Jewels Lockett, Kirk Sommers, Richard Cockrell, Jr. and Percy Rome, Jr., for summary judgment and on a motion by intervenor, Brenda Williams, for summary judgment on the issue of filiation. Both motions are opposed. The court has heard oral argument. Subject matter jurisdiction is allegedly based upon 42 U.S.C. S1983 and 28 U.S.C. S1331.

This is a wrongful death action based on 42 U.S.C. S1983 and pendent state law claims brought by plaintiff, Keven Leith Gaines, individually, as the surviving spouse of Alonzo Gaines, and as the natural tutrix of their minor child, Kimberly Michelle Gaines. Plaintiff claims that defendants used excessive force and failed to obtain prompt psychiatric or medical care which caused the death of her husband, Alonzo Gaines, on July 4, 1986.

After plaintiff instituted this action, Brenda Williams, claiming that Alicia Faye Nicholas was the natural child of decedent, sought to intervene in this case on behalf of the minor child. Plaintiff, Keven Gaines, denies that Alicia Faye Nicholas is decedent's natural child.

Motion for Summary Judgment on Filiation Intervenor, Brenda Williams, moves for summary judgment, arguing that decedent was the natural father of Alicia Nicholas. On January 17, 1991, this court issued an order directing the parties to address whether this court has subject matter jurisdiction to determine filiation in light of the well established presumption against federal court exercise of jurisdiction in domestic relations matter. See, e.g. RYKERS v. ALFORD, 832 F.2d 895 (5th Cir. 1987).

In this court's view, there is a serious question as to jurisdiction to resolve this issue. Because of the court's ruling on the other motion, however, the filiation issue will not be addressed.

Summary Judgment on Behalf of Defendants

The following facts are undisputed:

On July 4, 1986, decedent, Alonzo Gaines, was involved in a minor traffic accident. After failing to produce proof of insurance, defendant police officers, Tony Vidrine and Terry Raymond, issued a citiation to decedent and sent him "on his way" with his former passenger driving. However, as decedent's car left the scene, Vidrine and Raymond noticed erratic driving and the fact that the car "had stopped abruptly, partially on the roadway and partially off." The driver got out of the vehicle and left. The police officers approached the vehicle and noticed the decedent lying "across the floor board, wriggling and yelling with glazed eyes and wild looking as though mentally disturbed or on drugs." Decedent got out of the vehicle by

climbling through the "sun roof." There was an altercation with one of the officers. As other officers arrived, decedent was handcuffed and arrested, charged with battery on a police officer, and was transported to the Highland Road Police Station.

Gaines created a disturbance; he kicked at the doors and windows of the police car, mumbing that he wanted more "angel dust." After being placed inside a holding cell, he yelled and screamed. Shortly thereafter (defendants state about 15 minutes, plaintiffs allege about an hour) and officer entered the cell to take decedent to the Parish Prison and noticed decedent lying on the floor apparently unconscious and having difficulty breathing. Decedent was taken to Earl K. Long Hospital where he was pronounced dead. The official cause of

death was listed as affixation by aspiration of regurgitated stomach contents.

In support of their motion for summary judgment, defendants argue that where an arrestee does not show signs of physical injury buty is evidencing mental abnormalities, it is within the officer's discretion whether to seek medical help or simply transport the individual to a holding cell. In this case, defendants offer the depositions of the officers involved in the arrest and transportation of plaintiff to the Highland Street Station. Officer Mann testified that he thought that decedent was simply drunk at the time of arrest and therefore Vidrine, Raymond and Mann brought decedent to the Highland Station. Officer Lockett and Cockrell stated in deposition that by the time they arrived at the scene, decedent was being handcuffed and taken into the

police unit and that they had no further contact with decedent other than at the Highland Station where Lockett observed Gaines in his cell "cursing and standing toward the rear of the cell" and Cockrell stated in deposition that decedent was 'shaking the walls, he was screaming so loud and thrashing the walls around in there" but showed no signs of being ill.

Officer Kirk Summers testified that he arrived at the scene while decedent was being placed into the police unit, that he had nothing do do with the arrest of decedent but noticed that decedent was "hollering and screaming and appeared to be struggling in the backseat." The Chief of Police, Wayne Rogillio, testified that it is the policy of the Baton Rouge Police Department that where an policy arrestee has physical injuries,

he is promptly transported to the hospital but that when no physical injuries are involved, the arresting officers are to contact the precinct to determine whether the individual should be transported to the precinct or whether Emergency Medical Services should be contacted.

Based upon the foregoing depositions and affidavits, defendants argue that there is no evidence that the police officers engaged in any excessive force or in any way physically abused decedent.

In addition, defendants submit that their actions did not amount to "deliberate indifference."

In opposing the motion, plaintiffs cite the depositions of the arresting police officers to establish that the officers realized that Gaines had mental

problems. For example, plaintiffs cite the testimony of Officer Vines:

> Mr. Gaines was lie on the floor board almost on all fours, or he was on all fours, if I can remember. And he jumped up onto the seat and started coming straight towards her, so she closed the door, and he popped out of the sun roof, stuck his head out and his body and started climbling out of it. And he really looked weird, a wild eyed look to him.

Moreover, plaintiffs argue that withou regard to the issue of "deliberate indifference" on the part of the officers, there was evidence of physical beating at the time of his death. Plaintiffs argue that the cause of the minor contusions upon decedent presents a question of material fact. Finally, plaintiffs argue that because the City of Baton Rouge does not have a policy with respect to arrestees displaying solely emotional or mental problems, Chief

Rogillio and the City of Baton Rouge are liable for the actions of the police officers in this case.

The Supreme Court held in ESTELLE v. GAMBLE, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), that the Eight Amendment protects prison inmates who are denied medical treatment:

> "We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain," proscribed by the Eight Amendment." Id., 97 S.Ct. at 291. (citation omitted)

In JONES v. JOHNSON, 781 F.2d 769 (9th Cir. 1986), the Fifth Circuit extended the deliberate indifference test set forth by the Supreme Court in ESTELLE v. GAMBLE to pretrial detainees, although it "arises from the due process clause of the Fourteenth Amendment and not from the Eight Amendment prohibition against cruel

and unusual punishment." JONES, at 771. The Jones court went on to state the "this indifference must be substaintial to violate the consititution" as "state prison authorities have wide discretion regarding the nature and extent of medical treatment."

In BURNS v. CITY OF GALVESTON TEXAS, 905 F.2d 100 (5th Cir. 1990), plaintiff contended that the failure to train police officers to detect the suicidal tendencies of an inmate amounts to a S1983 violation. In rejecting this argument the court stated:

> Burn's second challenge is based on the training of the officers, or lack thereof. She maintains that her son was denied his constitutional right to appropriate medical care as the result of a City policy or custom of inadequately training its police officers in its medical screening and suicide detention procedures . . . Failure to train police officers in screening procedures geared toward detention of detainees with suicidal tendencies may rise to the level of a constitutional deprivation only if the right of detainees to adequate medical care

> includes an absolute right to phychological screening. We perceive no such right . . . It is one thing to require a municipality to train its police officers to recognize and not ignore known, demonstrable, and serious mental disorders. It is quite another to require as a constitutional minimum that a municipality train its officers to medically screen each pretrial detainee so that the officers will unerringly detect suicidal tendencies. Id.at 104.

In PARTRIDGE v. TWO UNKNOWN POLICE OFFICERS OF HOUSTON, 791 F.2d 1182 (5th Cir. 1986), the court recognized that in some limited situations, the failure to detect and treat a mental disorder may give rise to a S1983 violation. In interpreting the Partridge decision, the court in Burns, supra, stated that:

> Partidge's extension of Gamble to psychological or psychiatric conditions was based on allegations that the detainee in question had become hysterical during questioning, the police had been

> informed by the detainee's father that the detainee had suffered a nervous breakdown, and the detainee's records from a prior confinement included a notation that he had Partridge court held that a complaint alleging that the city and police department had failed to "adequately train the the jail personnel to handle arrested citizens with known mental problems" could arguably be the basis for finding a municipal custom of deliberate indifference to a citizen's constitutional rights. BURNS, 905 F.2d at 104 Citing PARTRIDGE, 791 F.2d at 1188.

After reviewing the submitted depositions and considering this case in light of the authority cited above, this court concludes that plaintiffs have not made out a S1983 cause of action against the defendants. Although the defendants admit that decedent was acting irrationally and they assumed that he was under the influence of either drugs or alcholol. There is no evidence to support the proposition that any officer

had information which should have put him on notice that the decedent had a serious medical problem. As such, the actions of the defendants cannot be characterized as "deliberate indifference" to decedent's serious medical needs.

Plaintiffs have offered no evidence that any defendant physicall abused decedent in any manner. Moreover, the minor contusions found upon the body of the decedent could not constitute the "significant injury" required by current Fifth Circuit precedent in excessive force claims. WESON v. OGLESBY, 910 F.2d 278 (5th Cir. 1990); HUGUET v. BONNETT, 900 F.2d 838 (5th Cir. 1990).

Accordingly, the motion for summary judgment on behalf of defendants in hereby GRANTED and judgment will be entered in favor of the defendants and against plaintiffs and intervenor, dismissing this action.

Because of the conclusion the court reaches on the federal claims, the state law claim of plaintiffs and intervenor will be dismissed without prejudice. REESE v. ANDERSON, 926 F.2d 494, 501 (5th Cir. 1991).

Baton Rouge, Louisiana, April 26, 1991.

JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

APPENDIX B

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

KEVEN L. GAINES, ET AL

CIVIL ACTION

VERSUS

NO. 87-538-1

CITY OF BATON ROUGE, ET AL

RULING ON MOTION
FOR RECONSIDERATION

This matter is before the court on motion by plaintiffs for recosideration of the court's ruling on summary judgment granted on April 29, 1991 in favor of defendants. Oral argument was heard on the motion for reconsideration. No written opposition has been filed. Jurisdiction is allegedly based on 28 U.S.C.S 1331 and 1343 and 42 U.S.C.S1983.

On April 29, 1991, this court ruled on a motion for summary judgment by defendant and on a motion for summary judgment by intervenor on the issue of filiation.

The court there listed the undisputed facts which will not be repeated here.

Plaintiffs have several contentions that this court's ruling granting summary judgment is clearly erroneous and was grossly unfair and constituted error to plaintiffs.

THE COURT HAS BEEN UNFAIR

Plaintiffs contend that they were not aware that the court *** act upon the motion for summary judgment "without notice."

The record shows, however, that defendants filed a memorandum in support of the motion for summary judgment on February 25, 1991 and a supplement to that motion on the same date. On February 27, 1991, plaintiffs were given an extension of time to reply to defendants' supplemental memorandum and

plaintiffs did so on Apri 1, 1991. It was not until April 29, 1991 that this court ruled on the motion for summary judgment. Plaintiffs had already filed their response to defendants' motion which this court considered in making its ruling. Plaintiffs have not asserted any new argument which was not included in their original brief and this court observes no unfairness to any party.

NO ALTERCATION

Next, plaintiffs argue that this court incorrectly concluded that there had been an "altercation" between decedent and one of that officers. Plaintiffs contend that there was no altercation and refer the court to Officer Vidrine's deposition, page 22, line 20, where in response to the question, describe the battery, Vidrine said, "Him coming to grab me and - -

well, basically I felt he would have grabbed me. He hit me with his body, I guess you could say . . ."

This court notes that on page 16, line 3, of Vidrine's deposition he says, "Well what is is, he came after me, and I thought he was coming to grab me or to hit me or something, and when he got close enough to where he - - he came in contact with me, anyway, with his hands and his chest, but I pushed him away . . ." On page 10, line 20, Officer Raymond responds to the question concerning probable cause to arrest Mr. Gaines, "The charges, when he pushed officer Vidrine and when he ran into him . . ."

Whether the word use by the court, "altercation," is a completely accurate description of the confrontation, it is undisputed that there was some

interaction between the decedent and a police officer, as a result of which decdedent was placed under arrest.

TIME IN CUSTODY

Plaintiffs argue that the court incorrectly concluded that Gaines was in custody at the police substation between fifteen minutes and one hour. Plaintiffs contend that is was two hours before anyone even made an attempt to check on Gaines which suggersts that there was deliberate indifference on the part of the officers. Plaintiffs offer no evidence, however, to substantiate these allegations.

Referring to submitted police reports, the court finds that the officers attempting to arrest Gaines called for assistance at the scene at 12:19 p.m. and called E.M.S. for assistance from the police substation at 1:25 p.m. It is unclear exactly what

time the officers actually arrived at the Highland Road substation with Mr. Gaines, but is is quite clear that Gaines was not in the cell for a period of two hours. The discrepancy as to the exact time decedent was detained does not present and issue of material fact sufficient to deny granting summary judgment. The actual length of time in custody does not really matter. The issue is whether any officer knew or should have known that Gaines was in need of immediate medical attention.

DECEDENT'S CONDITION

Plaintiffs contend that is at least is disputed whether the officers had information which should have put them on notice that decedent had a serious medical problem. Plaintiffs refer to officer Vidrine's deposition, page 29, line 8, "Gaines was walking around

screaming, he was not doing anything violent, except for screaming, if you want to call that violent."

Officer Marshall in her deposition, page 13, lines 8-13, testified that in her opinion Gaines was in such bad shape that he was not aware where he was.

Plaintiffs also refer the court to Dr. Laga's deposition, page 36, lines 16-25, where he opines that laymen should have detected a "problem." This medical witness was of the opinion that the decedent was suffering from acute sickle cell anemia. In his opinion, a person going through a sickle cell crisis would exhibit clear symptoms such as excruciating pain, a compromise of breathing, the possibility of the person fading in and out, bone pains and muscle pains. (depo. p. 43, lines 10-16).

Dr. Laga, (plaintiffs' expert) also testified, however, that a layman could

not recognize that another person was undergoing a sickle cell crisis. (Depo. p. 59, line 3).

Plaintiffs have presented no evidence upon which to base a conclusion that these officers should have realized there was something seriously medically wrong with Gaines and sought medical assistance for him immediately. They are not trained physicians.

Since Mr. Gaines was a pretrial detainee, the appropriate standard is set forth in CUPIT v. JONES, 835 F.2d (5th Cir. 1987), "the criterion to be applied to medical attention, entitles pretrial detainee to reasonable medical care unless the failure to supply it is reasonable related to legitimate government objectives." The "deliberate indifference" standard set out in ESTELLE v. GAMBLE, 429 U.S. 97 S.Ct. 285 (1976),

is applicable in situations dealing with convicted inmates. All evidence indicates that the officers all concluded that Gaines was under the influence of some type of narcotic or alcohol an appeared to all who observed him to be strong, vocal, and quite active. Officer Cockrell responded to the question, "how often do you see people brought in like that and put in a holding cell, or have you - -?" Cockrell responded, "I'd say at least once a month." Then, "it's common." (depo. p. 9, lines 4, 15).

Plaintiffs have not produced any evidence from which it could be argued that any of these officers knew or should have known Mr. Gaines needed immediate medical attention. His behavior and actions on that day seemed to indicate to the officers present that he was under the influence of narcotices and was not suffering from a mental disorder. In

each officer's deposition mention was made of Gaines' constant referral to drugs. There is no evidence that Gaines requested medical attention. Plaintiffs failed to provide any evidence that Gaines told officers that he was ill, in pain or in need of medical attention. Admittedly, his behavior was bizarre but plaintiffs have presented no facts which should have alerted any defendant to the need for immediate medical attention.

The argument presented by plaintiff implies that because the officers themselves characterized the decedent's behavior as "bizarre" or Abnormal," that fact alone is sufficient to establish a serious need fro immediate medical attention. The court would simply point out that law enforcement officers, by the nature of their work, most often deal

with people whose behavior may be siad to be "bizarre" or "abnormal." All such people do not require immediate medical attention.

FAILURE TO TRAIN

Plaintiffs' final argument is that inadequate training of police personnel is the basis for finding a municipal custom of deliberate indifference to the constitutional rights of citizents, thus a genuie issue for trial. Plaintiffs argue that in each of the officer's deposition, he or she admits that no training to recognize "abnormal" behavior was furnished nor was a written policy presented to them. This, plaintiffs argue, shows a deficiency in the policy department's training program and thus creates liability for the City.

Police personnel are not expected to be expert medical doctors. Indeed, plaintiffs have presented no evidence that even a medical doctor would have recognized a need for immediate medical attention based upon the information available to the officers. In CITY OF CANTON v. HARRIS, 489 U.S. _____, 109 S.Ct. 1197 (1989), the Supreme Court noted that municipal liability attaches only upon a showing of "deliberate indifference" and not gross negligence. The Court stated that, "Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under section 1983."

Plaintiffs have offered no evidence of any failure to train the officers in a "relevant respect."

The court has carefully considered all of the arguments by plaintiffs and find no reason to disturb its prior ruling.

Accordingly, plaintiffs motion for reconsideration is hereby DENIED.

Baton Rouge, Louisiana, October 24, 1991.

JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

**APPENDIX C**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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NO. 91-3942
Summary Calendar

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KEVIN KEITH GAINES, Individually and as Natural Tutrix of the Minor Child KIMBERLY MICHELLE GAINES,

Plaintiffs-Appellants,

versus

THE CITY OF BATON ROUGE, ET ALL,

Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Louisiana
(87-538 A)

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Before JONES, DUHE and WIENER, Circuit Judges.

EDITH H. JONES, Circuit Judge:

Questions of an arrestee's need for medical care and municipal liability are raised on the appeal of the summary judgment granted in this S 1983 action. Finding no error by the trial court, we affirm.

Alonzo Gaines died in a holding cell at a Baton Rouge police station. His widow filed a wrongful death suit under 42

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Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

U.S.C. S 1983 and alleged pendent state law claims. She named nine Baton Rouge Police officers, the Police Chief, Mayor, and City of Baton Rouge as defendants. Ms. Gaines charged that her husband's death resulted from the officers' use of excessive force and failure to obtain medical treatment due to indifference. She alleged that the Chief of Police, Mayor, and City were liable because the Baton Rouge Police Department did not have an adequate policy on how to treat arrestees who were ill or under the influence of drugs and because police officers received insufficient training to evaluate an arrestee's medical needs. The district court granted the defendants' motion for summary judgment on the federal claims and dismissed the state law claims without prejudice. Ms. Gains moved for reconsideration. After hearing oral argument, the district court

denied the motion with a written opinion.

The uncontroverted facts are that after a minor traffic accident, Officers Vidrine and Raymond ticketed Gaines for driving without liability insurance. His behavior at that time was apparently normal. He left the accident scene with his former passenger driving. The car swerved, came to a stop at the side of the road, and the driver got out. The officers found Gaines on the car floor mumbling and shouting incoherently. According to Officer Vidrine, Gaines was on the floor board almost on all fours, or he was on all fours, if I can remember. And he jumped up onto the seat and started coming straight towards - - Officer Raymond had moved in towards the door at the time. He started coming straight towards her, so she closed the door. And he popped out of the sun roof, struck his head out and his body and

started weird, a wild eyed look to him. And he climbed out and got on the hood, and thenjumped down onto the roadway. Gaines was arrested for battery of a police officer after he ran directly into Officer Vidrine. He resisted violently when the officers handcuffed him and kicked and fought after he was placed in the back of the police car.

Still handcuffed, Gaines was placed in a holding cell at the station. He shouted incoherent curses, obscenities and threats and informed the officers that he was on "angel dust" and wanted more, but did not appear to be in physical distress. Gaines never asked for medical assistance, nor did his shouts convey that he was in pain. At some point, he then became quit. Between fifteen minutes and one hour after Gaines was placed in the cell, officers discovered that he was unconscious. He had vomited and was having trouble

breathing. Officer Vidrine testified that he did not give Gaines CPR because he did not realize that it was necessary. Responding to the officer's calls, the Baton Rouge Fire Department arrived within three minutes and administered CPR; EMS followed shortly afterward. Gaines was dead on arrival at the hospital.

Gaines asphyxiate after aspirating vomit. The autopsy showed that Gaines was undergoing a sickle cell anemia crisis at the time of his death. His urine contained phencyclidine phosphate (PCP or "angel dust"). Dr. Suarez, the pathologist who performed the autopsy, testified that in his opinion Gaines' ingestion of PCP had triggered the sickle cell crisis, which in turn caused him to vomit. Dr. Suarez stated that if Gaines had been under medical care, his aspiration of vomit could have been

prevented; however, he probably would not have survived the sickle cell crisis. Gaines' only external injuries were superficial abrasions and bruises. There is no evidence that police officers caused the injuries or that they were related to his death.

According to the affidavit of Chief of Police Wayne Rogillio, the Police Department's policy is that officers are to render first aid and contact EMS or call an ambulance when they encounter persons with obvious physical injuries or "an obvious physical condition." If an arrestee is "acting in a violent manner, the officer in charge is to contact the Parish Prison, describe the prisoner's condition, and inquire as to whether or not the Parish Prison will accept that person or if the police should transport that person to a hospital." Id. Based on the depositions of other officers, it

appears that the police department does not have a specific policy for dealing with prisoners who have mental problems or are under the influence of drugs.

DISCUSSION

This Court conducts a de novo review of a district court's grant or denial of summary judgment. REESE v. ANDERSON, 926 F.2d 494, 498 (5th Cir. 1991). For summary judgment to be granted, the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, must demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); L & B. HOSPITAL VENTURES, INC. v. HEALTHCARE INTERNATIONAL, INC., 894 F.2d 150, 151 (5th Cir.), cert. denied, 111 S.Ct. 55 (1990). Although fact questions are considered with deference to the non-movant, Rule 56 "requires the entry of a summary judgment against the party failing to make a showing sufficient to

establish the existence of an element essential to that party's case." Id., citing CELOTEX CORP. v. CATRETT, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986).

On appeal, Ms. Gaines contends that Gaines' arrest was unlawful because he did not intentionally commit a battery on Officer Vidrine. She argues that the failure to obtain medical care for her husband resulted from the officers' deliberate indifference and suggests that her husband's behavior was so bizarre that the officers should have sought medical attention and that they should have noticed his symptoms of a sickle cell crisis. Ms. Gaines also alleges that the police department's lack of a coherent policy for dealing with arrestees who are on drugs or mentally ill is per se unconstitutional.

Ms. Gaines' contention that the arrest was without probable cause is without merit. Officer Vidrine stated in deposition that Gaines deliberately ran into him and tried to grab him. Summary judgment was properly granted on this claim.

Prison officials may not punitively subject pretrial detainees to adverse conditions of confinement. CUPIT v. JONES, 835 F.2d 82, 85 (5th Cir. 1987). If an adverse condition is arbitrary or purposeless, a court may infer that it is punitive.
Id. The Fourteenth Amendment requires that a pretrial detainee receive "reasonable medical care unless the failure to supply it is reasonably related to a legitimate government objective." Id. The appropriate inquiry is whether the denial of medical care was objectively reasonable in light of the

Fourteenth Amendment's guarantee of reasonable medical care and prohibition on punishment of pretrial detainees. PFANNSTIEL v. CITY OF MARION, 918 F.2d 1178, 1186 (5th Cir. 1990).

The district court initially granted summary judgment on the claim of denial of medical care based on the "deliberate indifference to medical needs" standard of ESTELLE v. GAMBLE, 429 U.S. 97, 104-05, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). That standard applies to convicted prisoners rather that to pretrial detainees. See 429 U.S. at 106. Upon reconsideration, the court used the "reasonable medical care" standard that this

Circuit uses in analyzing the claims of pretrial detainees. SEE FIELDS v. CITY OF SOUTH HOUSTON, TEX., 922 F.2d 1183, 1191 (5th Cir. 1991). The

court noted that the officers were under the impression that Gaines was under the influence of drugs or alcohol and that they frequently encountered bizarre behavior from such persons. The court found no evidence that would have alerted the officers to Gaines' need for immediate medical attention. It reasoned that the failure to provide medical care

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1 Neither party has questioned the conclusion that Gaines was a pretrial detainee rather that an arrestee, even though he had not yet been formally charged with an offense. Because the parties have not debated the effect of such a distinction on whether the Fourteenth or Fourth Amendments govern the standards of police conduct, we decline to do so. The issue has arisen, however, in the context of excessive force cases. SEE AUSTIN v. HAMILTON, 945 F.2d 1155 (10th Cir. 1991) (discussion of differences among the Circuits).

was reasonable under the circumstances. The district court also correctly found that Ms. Gaines had "offered no evidence that any defendant physically abused

decedent in any manner." Therefore, summary judgment was properly granted as to the individual officers. SEE REESE, 926 F.2d at 501 (5th Cir. 1991).

The court dismissed Ms. Gaines' claims against the municipal defendants based on CITY OF CANTON, OHIO v. HARRIS, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). In that case, the Supreme Court held that inadequate police training may "serve as the basis for S 1983 liability only where the failure to train in a relevant respect amounts to deliberate indifference to the constitutional rights of persons with whom the police come into contact." Id. at 388. The Supreme Court held that under its decision in MONELL v. DEPT. OF SOCIAL SERVICES OF CITY OF NEW YORK, 436. U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), there is no municipal liability under S 1983 unless a municipal

policy is the "moving force" behind the constitutional violation. CITY OF CANTON, 489 U.S. at 389. Failure evidences such a deliberate indifference to the rights of its inhabitants that the shortcoming can properly be though of as a city "policy or custom." Id. Liability will attach only if "in light of the duties assigned to specific officers of employees the need for more or difference training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need." Id. at 390.

The district court noted that Baton Rouge police officers often encounter persons whose behavior is bizarre or who are obviously under the influence of drugs. The record shows that the City

has no clear policy and apparently has provided officers with no specific training for dealing with such persons or evaluating their medical needs. Even assuming that this failure was a result of deliberate indifference, Ms. Gaines has not demonstrated that it caused her husband's death. The officers' initial decision to take him to jail was logical under the circumstances. Although the officers were aware that Gaines was on drugs, a sickle cell crisis cannot be diagnosed without a laboratory test. Gaines was violent and did not show signs of physical distress. Medical help was summoned as soon as the officers became aware that he was ill. Id. at 486, 587. The key to causation is that the officers could not reasonably have been put on notice by Gaines' bizarre shouting and physical activity -- with no indication of a medical need -- that a medical

emergency was occurring. Consequently, the alleged shortcomings of municipal failure to train its officers about mental or emotional problems could not have caused them to fail to recognize Gaines's medical crisis. "[A] plaintiff cannot succeed in a S 1983 action if he fails to demonstrate a causal connection between the state official's alleged wrongful action and his deprivation of life, liberty, or property." REIMER v. SMITH, 663 F.2d 1316, 1322 n. 4 (5th Cir. 1981). Ms. Gaines has not made such a showing.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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NO. 91-3942

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KEVEN LEITH GAINES, Individually and as Natural Tutrix of the Minor Child KIMBERLY MICHELLE GAINES,

Plaintiffs-Appellants,

versus

THE CITY OF BATON ROUGE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the

Middle District of Louisiana

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ON PETITION FOR REHEARING

(October 13, 1992)

Before JONES, DUHE and WIENER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby Denied.

ENTERED FOR THE COURT:

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United States Circuit Judge

# APPENDIX E

## FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

### AMENDMENT V

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## EIGHTH AMENDMENT TO THE UNITED STATES CONSTITITUTION

### AMENDMENT VIII.

Excessive bail, fines, punishments

Excessive bail shall not be required, nor excessive fines impolsed, nor cruel and unusual punishments inflicted.

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

AMENDMENT XIV,

Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 42 U.S.C. 1983(1)

That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, priviledges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

A. (1) Battery of a police officer is a battery committed without the consent of the victim when the offender has reasonable grounds to believe the victim is a police officer acting in the performance of his duty.

(2) L.S.A-R.S. 14:34.2 a(1), (2)

For purposes of this Section, "police officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshalls, deputy marshals, correctional officers, constables, wildlife enforcement agents, and probation and parole officers.